

SECOND REGULAR SESSION

# SENATE BILL NO. 933

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR YECKEL.

Pre-filed December 9, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal section 166.435, RSMo, and to enact in lieu thereof thirteen new sections relating to higher education savings programs.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 166.435, RSMo, is repealed and thirteen new sections enacted in lieu thereof, to be known as sections 166.435, 166.500, 166.505, 166.510, 166.515, 166.520, 166.525, 166.530, 166.540, 166.545, 166.550, 166.555, and 166.556, to read as follows:

166.435. 1. **Notwithstanding any law to the contrary**, the assets of the savings program held by the board and the assets of any similar [savings program] **programs sponsored, held, or otherwise authorized by law by this state or any other state or subdivision thereof and** qualified pursuant to Section 529 of the Internal Revenue Code and any income therefrom shall be exempt from all taxation by the state or any of its political subdivisions. Income earned or received from the fund [by any participant or beneficiary shall not be subject to state] **or any similar program sponsored, held, or otherwise authorized by law by this state or any other state or subdivision thereof and qualified pursuant to Section 529 of the Internal Revenue Code** by any participant or beneficiary shall not be subject to state income tax **imposed pursuant to chapter 143, RSMo**, and shall be eligible for any benefits provided in accordance with Section 529 of the Internal Revenue Code. The exemption from taxation pursuant to this section shall apply only to assets and income maintained, accrued, or expended pursuant to the requirements of the [savings program established pursuant to sections 166.400 to 166.455, the provisions of this section] **programs sponsored, held, or otherwise authorized by law by this state or any other state or subdivision thereof** and Section 529 of the Internal Revenue Code, and no exemption shall apply to assets and income expended for any other purposes. Annual contributions **made to the savings program**

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

held by the board and any similar program sponsored, held, or otherwise authorized by law by this state or any other state or subdivision thereof qualified pursuant to Section 529 of the Internal Revenue Code, up to and including eight thousand dollars [made to the savings program] **for the taxpayer**, shall be subtracted [from] **in determining** Missouri adjusted gross income pursuant to section 143.121, RSMo.

2. If any deductible contributions to or earnings from any [savings account] **such program referred to in this section** are distributed and not used to pay qualified higher education expenses or are not held for the minimum length of time established by the [board] **appropriate state or political subdivision authority**, the amount so distributed shall be added to the Missouri adjusted gross income of the participant, or, if the participant is not living, the beneficiary.

3. The provisions of this section shall apply to tax years beginning on or after January 1, [1999] **2004**.

**166.500. Sections 166.500 to 166.556 shall be known and may be cited as the "Missouri Higher Education Deposit Program".**

**166.505. Notwithstanding the provisions of sections 166.400 to 166.456 to the contrary, this program is established as a nonexclusive alternative to the Missouri higher education savings program and any participant may elect to participate in both programs subject to aggregate Missouri program limitations.**

**166.510. As used in sections 166.500 to 166.556, except where the context clearly requires another interpretation, the following terms mean:**

(1) "Beneficiary", any individual designated by a participation agreement to benefit from payments for qualified higher education expenses at an eligible educational institution;

(2) "Benefits", the payment of qualified higher education expenses on behalf of a beneficiary from a deposit account during the beneficiary's attendance at an eligible educational institution;

(3) "Board", the Missouri higher education deposit program board established in section 166.515;

(4) "CAMELS rating", the Capital, Assets, Management, Earnings, Liquidity, and Sensitivity rating system of the Federal Financial Institution Examination Counsel (FFIEC);

(5) "Eligible educational institution", an institution of postsecondary education as defined in Section 529(e)(5) of the Internal Revenue Code;

(6) "Financial institution", a depository institution and any intermediary that brokers certificates of deposits;

(7) "Internal Revenue Code", the Internal Revenue Code of 1986, as amended;

(8) "Missouri higher education deposit program" or "deposit program", the

program created pursuant to sections 166.500 to 166.556;

(9) "Participant", a person who has entered into a participation agreement pursuant to sections 166.500 to 166.556 for the advance payment of qualified higher education expenses on behalf of a beneficiary;

(10) "Participation agreement", an agreement between a participant and the board pursuant to and conforming with the requirements of sections 166.500 to 166.556;

(11) "Qualified higher education expenses", the qualified costs of tuition and fees and other expenses for attendance at an eligible educational institution, as defined in Section 529(e)(3) of the Internal Revenue Code, as amended.

166.515. 1. There is hereby created the "Missouri Higher Education Deposit Program". The program shall be administered by the Missouri higher education deposit program board which shall consist of the director of the Missouri division of finance who shall serve as chairman, the commissioner of the department of higher education, the commissioner of the office of administration, and four private members appointed by the governor with the advice and consent of the senate who have demonstrable experience and knowledge in the areas of deposit rate determination and placement of depository certificates of deposit or other deposit investments. The four private members shall be appointed to serve for terms of four years from the date of appointment, with the exception of initial private members. Initial members shall serve terms as follows: one private member shall serve a one-year term; one private member shall serve a two-year term; one private member shall serve a three-year term; and one private member shall serve a four-year term. Once the initial terms have been completed, all such private members may be appointed to serve for an additional four-year term. The members of the board shall be subject to the conflict of interest provisions in section 105.452, RSMo. Any member who violates the conflict of interest provisions shall be removed from the board.

2. In order to establish and administer the deposit program, the board, in addition to its other powers and authority, shall have the power and authority to:

(1) Develop and implement the Missouri higher education deposit program and, notwithstanding any provision of sections 166.500 to 166.556 to the contrary, the deposit programs and services consistent with the purposes and objectives of sections 166.500 to 166.556;

(2) Promulgate reasonable rules and regulations and establish policies and procedures to implement sections 166.500 to 166.556, to permit the deposit program to qualify as a qualified state tuition program pursuant to Section 529 of the Internal Revenue Code and to ensure the deposit program's compliance with all

applicable laws;

(3) Develop and implement educational programs and related informational materials for participants, either directly or through a contractual arrangement with a financial institution or other entities for deposit educational services, and their families, including special programs and materials to inform families with children of various ages regarding methods for financing education and training beyond high school;

(4) Enter into an agreement with any financial institution, entity, or business clearinghouse for the operation of the deposit program pursuant to sections 166.500 to 166.556; providing however, that such institution, entity, or clearinghouse shall be a private for-profit or not-for-profit entity and not a government agency. No more than one board member may have a direct interest in such institution, entity, or clearinghouse. Such institution, entity, or clearinghouse shall implement the board's policies and administer the program for the board and with electing depository institutions and others;

(5) Enter into participation agreements with participants;

(6) Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the account of the deposit program;

(7) Invest the funds received from participants in appropriate investment instruments to be held by depository institutions or directly deposit such funds in depository institutions as provided by the board and elected by the participants;

(8) Make appropriate payments and distributions on behalf of beneficiaries pursuant to participation agreements;

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 166.500 to 166.556 and the rules adopted by the board;

(10) Make provision for the payment of costs of administration and operation of the deposit program;

(11) Effectuate and carry out all the powers granted by sections 166.500 to 166.556, and have all other powers necessary to carry out and effectuate the purposes, objectives, and provisions of sections 166.500 to 166.556 pertaining to the deposit program;

(12) Procure insurance, guarantees, or other protections against any loss in connection with the assets or activities of the deposit program, as the members in their best judgment deem necessary;

(13) To both adopt and implement various methods of transferring money by electronic means to efficiently transfer funds to depository institutions for

deposit, and in addition or in the alternative, to allow funds to be transferred by agent agreements, assignment, or otherwise, provided such transfer occurs within two business days;

(14) To both adopt and implement methods and policies designed to obtain the maximum insurance of such funds for each participant permitted and provided for by the Federal Deposit Insurance Corporation, or any other federal agency insuring deposits, and taking into consideration the law and regulation promulgated by such federal agencies for deposit insurance.

3. Four members of the board shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. No action shall be taken by the board except upon the affirmative vote of a majority of the members present, except as otherwise provided by law.

4. The board shall meet within the state of Missouri at the time set at a previously scheduled meeting or by the request of any four members of the board. Notice of the meeting shall be delivered to all other trustees in person or by depositing notice in a United States post office in a properly stamped and addressed envelope not less than six days prior to the date fixed for the meeting. The board may meet at any time by unanimous mutual consent. There shall be at least one meeting in each quarter.

5. The funds shall be invested only in those investments which a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims, as provided in section 105.688, RSMo, as a means to hold funds until they are placed in a Missouri depository institution as a deposit. The board may delegate to duly appointed representatives of financial institutions authority to act in place of the board in the investment and reinvestment of all or part of the moneys and may also delegate to such representatives the authority to act in place of the board in the holding, purchasing, selling, assigning, transferring, or disposing of any or all of the investments in which such moneys shall have been invested, as well as the proceeds of such investments and such moneys, however, such investments shall be limited to certificates of deposit and other deposits in federally insured depository institutions. Such representatives shall be registered as "qualified student deposit advisors on section 529 plans" with the board and such board shall, by rule, develop and administer qualification tests from time to time to provide representatives the opportunity to qualify for this program. In exercising or delegating its investment powers and authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances

prevailing at the time of the action or decision. No member of the board shall be liable for any action taken or omitted with respect to the exercise of, or delegation of, these powers and authority if such member shall have discharged the duties of his or her position in good faith and with that degree of diligence, care, and skill which a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

6. No board member or employee of the deposit program shall personally receive any gain or profit from any funds or transaction of the deposit program as a result of his or her membership of the board. Any board member, employee, or agent of the deposit program accepting any gratuity or compensation for the purpose of influencing such board member's, employee's, or agent's action with respect to choice of intermediary, including any financial institution, entity or clearinghouse, for the funds of the deposit program shall thereby forfeit the office and in addition thereto be subject to the penalties prescribed for bribery. However, a board member who is regularly employed directly or indirectly by a financial institution may state that institution's interest and absent himself from voting.

7. Depository institutions originating the deposit program shall be the agent of the board and offer terms for certificates of deposit and other deposits in such program as permitted by the board, subject to a uniform interest rate disclosure as defined in federal regulations of the Board of Governors of the Federal Reserve System, specifically Federal Reserve Regulation DD, as amended from time to time. The board shall establish various deposit opportunities based on amounts deposited and length of time held that are uniformly available to all depository institutions that elect to participate in the program, and the various categories of fixed or variable rates shall be the only interest rates available under this program. A depository institution that originates the deposit as agent for the board and participates in the program shall receive back the certificate of deposit or other deposit, provided such depository institution has a CAMELS rating of 1 or 2, or, a comparable regulatory rating that is the substantial equivalent of the CAMELS rating. Such deposit and certificate of deposit shall be titled in the name of the clearing entity for the benefit of the participant, and shall be insured as permitted by any agency of the federal government that insures deposits in depository institutions. Any depository institution or intermediary that fails to comply with these provisions shall forfeit its right to participate in this program; provided however, the board shall be the sole and exclusive judge of compliance except as otherwise provided by provisions in Section 529 of the Internal Revenue Code and the Internal Revenue Service enforcement of such section.

166.520. 1. The board may enter into deposit program participation agreements with participants on behalf of beneficiaries pursuant to the provisions of sections 166.500 to 166.556, including the following terms and conditions:

(1) A participation agreement shall stipulate the terms and conditions of the deposit program in which the participant makes contributions;

(2) A participation agreement shall specify the method for calculating the return on the contribution made by the participant as otherwise provided in sections 166.500 to 166.556;

(3) The execution of a participation agreement by the board shall not guarantee that the beneficiary named in any participation agreement will be admitted to an eligible educational institution, be allowed to continue to attend an eligible educational institution after having been admitted or will graduate from an eligible educational institution;

(4) A participation agreement shall disclose to participants the risk associated with depositing moneys with the board, including information on federal insured deposit availability and coverage and penalties for withdrawal before the deposit has matured;

(5) Participation agreements shall be organized and presented in a way and with language that is easily understandable by the general public; and

(6) A participation agreement shall clearly and prominently disclose to participants the existence of any fee or similar charge assessed against the accounts of the participants for administration or services.

2. The board shall establish the maximum amount which may be contributed annually by a participant with respect to a beneficiary.

3. The board shall establish a total contribution limit for deposit accounts established under the deposit program with respect to a beneficiary to permit the deposit program to qualify as a qualified state tuition program pursuant to Section 529 of the Internal Revenue Code. No contribution may be made to a deposit account for a beneficiary if it would cause the balance of all deposit accounts of the beneficiary to exceed the total contribution limit established by the board. The board may establish other requirements that it deems appropriate to provide adequate safeguards to prevent contributions on behalf of a beneficiary from exceeding what is necessary to provide for the qualified higher education expenses of the beneficiary.

4. The board shall establish the minimum length of time that contributions and earnings must be held by the deposit program to qualify pursuant to section 166.435. Any contributions or earnings that are withdrawn or distributed from a deposit account prior to the expiration of the minimum length of time, as

established by the board, shall be subject to a penalty pursuant to section 166.530.

166.525. All money paid by a participant in connection with participation agreements shall be deposited as received and shall be promptly invested by the board or may be directly deposited by the board's agents. Contributions and earnings thereon accumulated on behalf of participants in the deposit program may be used, as provided in the participation agreement, for qualified higher education expenses.

166.530. Any participant may cancel a participation agreement at will. The board shall impose a penalty equal to or greater than ten percent of the earnings of an account for any distribution that is not:

- (1) Used exclusively for qualified higher education expenses of the designated beneficiary;
- (2) Made because of death or disability of the designated beneficiary;
- (3) Made because of the receipt of scholarship by the designated beneficiary;
- (4) A rollover distribution, as defined in Section 529(c)(3)(C)(i) of the Internal Revenue Code; or
- (5) Held in the fund for the minimum length of time established by the board.

166.540. The assets of the deposit program shall at all times be preserved, invested, and expended only for the purposes set forth in this section and in accordance with the participation agreements, and no property rights therein shall exist in favor of the state.

166.545. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated pursuant to sections 166.500 to 166.556 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to August 28, 2004, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 2004, if it fully complied with the provisions of chapter 536, RSMo. Sections 166.500 to 166.556 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

166.550. The Missouri state auditor shall, on a semiannual basis, review the financial status and investment policy of the program as well as the participation rate in the program. The auditor shall also review the continued viability of the program and the administration of the program by the board. The auditor shall



report the findings annually to the board, which shall subsequently disclose such findings at a public meeting.

**166.555.** Money accruing to and deposited in individual deposit accounts shall not be part of total state revenues as defined in sections 17 and 18 of article X of the Constitution of the state of Missouri and the expenditure of such revenues shall not be an expense of state government under section 20 of article X of the Constitution of the state of Missouri.

**166.556.** All personally identifiable information concerning participants and beneficiaries of accounts established within the Missouri higher education deposit program pursuant to sections 166.500 to 166.556 shall be confidential, and any disclosure of such information shall be restricted to purposes directly connected with the administration of the program.

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